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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1972

NO. .....

LITTON BUSINESS SYSTEMS, INC.,

Petitioner,

v.

MONROE LODGE NO. 770, INTERNATIONAL ASSOCIATION OF MACHINIST & AEROSPACE WORKERS, AFL-CIO,

Respondent,

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above styled case on May 15, 1972.

OPINIONS BELOW

The opinion of the Court of Appeals is not yet reported but is reproduced in Appendix A to this Petition. In a Per Curiam opinion the Court of Appeals affirmed in all respects a decision of the United States District Court for the Western District of Virginia, reported at 334 F. Supp. 310 (1971), and is reproduced in Appendix B to this Petition.

JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

STATUTES INVOLVED

"(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value — * * *

"(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce — * * *

"(c) The provisions of this section shall not be applicable * * * (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; * * *, 29 U.S.C. 186 (a) (c) (4).

QUESTIONS PRESENTED

1. Whether a Union dues checkoff assignment and authorization which contains a so-called automatic renewal clause, without an employee executing a new authorization after the end of one year, is valid under 29 U.S.C. 186(c)(4).

2. Whether a Union dues checkoff assignment and authorization which contains a so-called automatic renewal clause providing that the authorization shall continue in effect for yearly periods beyond one year unless revoked within 15 days after any irrevocable period is valid under 29 U.S.C. 186(c)(4).

3. Whether a Union dues checkoff assignment and authorization which provides after one year for its automatic renewal for subsequent yearly periods unless revoked within 15 days after each yearly period, but does not provide that the assignment and authorization shall not be irrevocable beyond the termination date of the applicable collective agreement or one year, whichever occurs sooner, is valid under 29 U.S.C. 186(c)(4).

STATEMENT OF THE CASE

Respondent instituted this action seeking to recover from Petitioner an amount of money which it claimed the Petitioner had failed to deduct from employees as Union dues and transmit to Respondent, as provided by Article I of a collective agreement between them, dated March 17, 1967, and the dues checkoff assignments and authorizations executed by employees pursuant thereto.

The Union dues checkoff authorizations executed by employees pursuant to Article I of the collective agreement contained this language: "*** I submit this authorization and assignment with the understanding that it will be effective irrevocable for a period of one year from this date, or up to the termination date of the current collective bargaining agreement *** whichever occurs sooner.

"This authorization and assignment shall continue in full force and effect for yearly periods beyond the irrevocable period set forth above, and each subsequent yearly

period shall be similarly irrevocable unless revoked by me within fifteen (15) days after any irrevocable period hereof ***."

In the latter part of August and the first part of September, 1968, Petitioner began receiving from its employees, who were members of the Union, written notices of revocation indicating that the employees wanted the Company to discontinue deducting Union dues from their paychecks. By July of 1969, more than 120 employees had sent in notices of revocation of the Union dues checkoff authorizations. Some of these notices indicated that the employee was resigning from the Union, or wished to resign, or was otherwise withdrawing his membership from the Union. While some of these written notices of revocation were received by the Company prior to one year after they were signed, most were received more than one year after the authorizations were signed and not within the 15-day escape period.

Petitioner denied that it had a legal duty or, in fact, a legal right to deduct Union dues from the pay of its employees and transmit them to the Union in those instances where a written revocation of the Union dues authorizations had been received by the Company from employees more than one year after the date of the authorization, which it purported to revoke, without regard to the 15-day escape period, and that the dues checkoff assignment and authorization was unlawful and unenforceable because both Article I of the contract and the assignment and authorization executed pursuant thereto, failed to comply with 29 U.S.C. 186(c)(4) in two respects.

First, they contained a provision which prevented an employee from revoking an authorization except during a so-called 15-day escape period following the end of one

year from the date the assignment and authorization was signed, and further provided that if it had not been revoked within the 15-day period, the authorization shall continue in full force and effect for yearly periods beyond the irrevocable period, making the authorization revocable only once a year during each such succeeding 15-day period. Petitioner contended that this restrictive language was designed to make it difficult for an employee to know when an authorization could be revoked, and constituted a burden on the employee's freedom of choice to terminate the authorization after one year.

Secondly, the particular assignment and authorization here involved failed to include essential language required by 29 U.S.C. 186(c)(4), to be in the assignment, that is, that the assignment "*** shall not be irrevocable for a period of more than one year, *or beyond the termination date of the applicable collective agreement*, whichever occurs sooner; ***" (Italics supplied). The words in italics were omitted.

Petitioner's position was that because 29 U.S.C. 186-(c)(4) provided for a fine of not more than $10,000 or imprisonment of not more than one year, or both, for a violation that the statute should be strictly construed.

The jurisdiction of the United States District Court was derived from 29 U.S.C. 185.

REASON FOR GRANTING THE WRIT

I

The decision of the Court of Appeals is in conflict with the principles enunciated by this Court.

In *Felter v. Southern Pacific Co.*, 359 U.S. 327, 79 S. Ct. 847 (1959), this Court construed § 11(b) of the Rail-

way Labor Act, 45 U.S.C. 152(b) which was passed subsequent to § 302 of the Labor Management Relations Act. § 11(b) contains language quite similar to § 302.

In *Felter*, the labor contract provided that the employee must use a particular form furnished by the Union to revoke an assignment of wages for Union dues.

This Court held that the carriers and labor organizations had no authority under the Act to reach terms which would restrict the employee's complete freedom to revoke an assignment by a writing directed to the employer after one year.

In the present case, the employees had no choice as to the terms of the assignment and authorization they should execute to revoke an assignment. The terms were set out in Article I of the collective agreement. Additionally, the language of the assignment and authorization was unduly restrictive and designed to cause the assignment to remain in effect beyond one year contrary to 29 U.S.C. 186(c)(4).

II

The Court of Appeals has decided an important question of federal law which has not been, but it is respectfully submitted, should be, settled by this Court.

The Court will presumably take judicial notice of the fact that there are thousands of collective bargaining agreements in effect throughout the country in which employers have agreed to deduct from the wages of employees Union dues and transmit them to the appropriate Union official.

Congress recognized the opportunities for fraud and collusion between an employer and a labor organization. To guard against these possibilities, 29 U.S.C. 186(c)(4) was enacted permitting employers to pay money to labor organizations only under very stringent terms.

To protect the employee's freedom of choice and to prevent him from becoming a captive of a labor organization, Congress by 29 U.S.C. 186(c)(4) set forth precisely the terms under which an employer could deduct and transmit Union dues. To emphasize its concern for protecting the freedom of an employee in this regard, Congress wrote into this statute severe criminal penalties for its violation.

The entire scheme of the so-called automatic renewal clause is to make it difficult, if not impossible, for an employee to revoke his authorization. Such assignments and authorizations are not executed on a single date, but from time to time as employees are hired.

It will be a rare employee indeed who will know when his 15-day escape period comes around.

If such a brief period of time was to be allowed an employee within which to revoke his assignment, it would have been a simple task for the Union to notify the employee when his 15-day period occurred.

Even if this Court should conclude that automatic renewal clauses as such do not violate 29 U.S.C. 186(c)(4), this should not, it is respectfully submitted, be cause for denying a Writ of Certiorari in this case.

The automatic renewal clause here in question has a fatal flaw which violates the express provisions of 29 U.S.C. 186(c)(4).

This automatic renewal clause does not provide, as it should have, that this assignment, authorization and direction shall be automatically renewed and shall be irrevocable for successive periods of one year each, *or for the period of each succeeding applicable collective bargaining agreement with the Union, whichever shall be shorter.* Such language is found in the authorization and assignment up-

held in the unreported case of *Brooks v. Continental Can Co.*, 59 LRRM 2779, 51 L.C. ¶19,764 (S.D. N.Y. 1965), the only case Petitioner has found dealing with an automatic renewal clause.

The obvious purpose of this language was to permit an employee to revoke his Union dues checkoff authorization whenever the current collective bargaining agreement expired even though that happened in less than one year. Otherwise, an employee would be compelled to pay Union dues after the collective bargaining agreement had expired. Thus, no matter how dissatisfied an employee may be with the service the Union had rendered to him, he would be forced to continue to pay for a service he no longer desired, until one year from the date he signed an authorization.

When a collective bargaining agreement expires, an employee may wish to change his collective bargaining agent or to discontinue Union affiliation altogether, but under the automatic renewal clause under consideration such an employee would, nevertheless, have to pay Union dues for the balance of the year, contrary to the plain language of 29 U.S.C. 186(c)(4).

CONCLUSION

For the foregoing reasons, Petitioner urges that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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Of Counsel

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August 3, 1972

APPENDIX A

[fol. 1]

UNITED STATES COURT OF APPEALS
For the Fourth Circuit

NO. 71-2063

MONROE LODGE, No. 770,
International Association of
Machinists and Aerospace Workers,
AFL-CIO, Appellee,

-v-

LITTON BUSINESS SYSTEMS, Inc., Appellant.

NO. 71-2064

MONROE LODGE, No. 770,
International Association of
Machinists and Aerospace Workers,
AFL-CIO, Appellant,

-v-

LITTON BUSINESS SYSTEMS, Inc., Appellee.

Appeals from the United States District Court for the Western District of Virginia, at Abingdon. Ted Dalton, Judge.

(Argued March 8, 1972. Decided May 15, 1972.)

Before BRYAN, CRAVEN, and BUTZNER, Circuit Judges.

Wayne L. Bell and Waldo G. Miles (Woodward, Miles and Flannagan on brief) for Litton Business Systems, Inc.; Archibald A. Campbell and Louis P. Poulton (Plato E. Papps, and Campbell and Campbell on brief) for Monroe Lodge, No. 770.

[fol. 2] PER CURIAM:

In this appeal Litton Business Systems, Inc. challenges the district court's ruling that the terms of a collective bargaining agreement, which were restated in notices signed by employees, for the annual automatic renewal of authority to check off dues did not violate § 302(c)(4) of the Labor Management Relations Act, 29 U.S.C. § 186 (c)(4) (1970). Cross-appealing, the union protests the court's expansive reading of a clause allowing the employees to revoke their authorizations for check-off. We hold the district judge correctly decided both issues, and we affirm on his opinion which fully and accurately explains both the facts and law. Monroe Lodge 770, IAM v. Litton Business Systems, Inc., 334 F. Supp. 310 (W.D. Va. 1971). We need only add that the principles stated in Felter v. Southern Pacific Co., 359 U.S. 326 (1959), on which the company primarily relies, pertain to a factual situation so different that they do not dictate reversal.

In its brief the union conceded that the company's computation of damages may be correct. Accordingly, the judgment is affirmed, but the case is remanded
[fol. 3] with leave granted to the company to move for recomputation of the sum due the union. We find no error in the court's disallowance of pre-judgment interest. Each party shall bear its own costs.

APPENDIX B

[fol. 1]

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA ABINGDON, VIRGINIA

MONROE LODGE NO. 770
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
A.F. OF L.-CIO
617-1/2 Shelby Street
Bristol, Tennessee,

Plaintiff,

v.

LITTON BUSINESS SYSTEMS, INC.
C/o Thomas L. Tolley
610 Mutual Building
909 East Main Street
Richmond, Virginia,

Defendant.

Civil Action
No. 68-C-121-A

OPINION AND JUDGMENT

(Filed September 27, 1971)

The Court by tentative views rendered August 27, 1971 outlined its decision in this case. Since that date, counsel have submitted further memoranda (filed September 1, 1971) urging their respective positions on the issues involved. Upon mature consideration it is adjudged and decided as follows:

Appendix B

The plaintiff in the case at bar is an unincorporated labor organization which seeks relief from this court for the defendant's alleged breach of the collective bargaining agreement entered between the plaintiff (hereinafter referred to as the Union) and Monroe International, Inc., Bristol Division on April 27, 1967. The corporate name of Monroe International was subsequently changed to Litton Business Systems, Inc. when Monroe became a division thereof. This dispute centers around Litton's (hereinafter the Company's) failure to deduct union dues from the wages of employees who had been members of the Union.

The specific provision of the agreement with which the Union alleges the Company failed to comply is Article I —Union Security which reads as follows:

> Upon receipt, by the Company, of a signed authorization, the Company will deduct the Union initiation or reinstatement fees and monthly dues from the pay of each of its employees who have or who may hereafter authorize such deductions. The sum so deducted shall be paid monthly to the appropriate financial officer of the Union, together with an itemized statement showing the source of each deduction.
>
> All authorized deductions shall be effective and irrevocable for a period of one year or to the termination of the Agreement, whichever occurs sooner.

[fol. 2] This authorization shall continue in full force and effect for yearly periods beyond the irrevocable period set forth above, and each subsequent yearly period shall be similarly irrevocable unless revoked within fifteen (15) days after an irrevocable period hereof. Such revocations shall be ef-

fective by Registered written notice to both Company and the Union within such fifteen (15) day period.

The employees whose dues had not been deducted had executed written authorizations as prescribed by the union security article given above. The content of this form is as follows:

VOLUNTARY CHECKOFF AUTHORIZATION AND ASSIGNMENT

Name ..... Clock No. ..... Dept. .....

I hereby authorize ..... to deduct each month from my wages on account of membership dues in Lodge No. ..... of the International Association of Machinists. I further authorize the Company to deduct from my wage to the amount of union initiation fee, reinstatement fee and/or assessments when notified in writing to do so by the Financial Secretary of the Union.

The sums thus to be deducted are hereby assigned by me to Lodge No. ..... of the International Association of Machinists and are to be remitted by the Company to the Financial Secretary of the Union.

From time to time the Financial Secretary of the Union will notify the employer as to the amount of the Local Lodge's initiation and reinstatement fees and the amount of the Local Lodge's monthly dues.

I submit this authorization and assignment with the understanding that it will be effective irrevocable for a period of one year from this date, or up to the termination date of the current collective bargaining agreement (if any) between the ..... and Lodge No. ..... of the International Association of Machinists, whichever occurs sooner.

Appendix B

This authorization and assignment shall continue in full force and effect for yearly periods beyond the irrevocable period set for the above and each subsequent yearly period shall be similarly irrevocable unless revoked by me within fifteen (15) days after any irrevocable period hereof. Such revocation shall be effected by written notice to the Employer and the Union within such fifteen (15) day period.

Signature..... Date .....

During the last few months of the first year and during a great part of the second year of this collective agreement, a large number of employees delivered to the Company written revocations of these authorizations. These notices expressly stated that the employees were re-

[fol. 3] signing from the Union, and that they wanted the Company to discontinue the deduction of union dues from their wages. The apparent reason for these revocations and resignations was the employees' dissatisfaction with an increase in the amount of union dues. The dispute in the case at bar concerns the validity of those revocations which were not made in accordance with the terms of the authorizations and the collective agreement. Of specific concern is the Company's act of honoring those revocations which occurred in the latter part of the first year, and also those which were submitted at different times during the second year after the expiration of the fifteen day period.

Although the collective agreement between the Union and the Company and the employee authorization cards both provided for automatic renewal for a yearly period, if the cards were not revoked within the fifteen day period, the Company honored these revocations and discontinued

the dues deductions from the wages of employees who had submitted such revocations.

On September 30, 1968, the Union wrote the Director of Industrial Relations of the Company advising that it felt that the Company was violating the terms of the labor contract by failing to comply with Article I thereof, which the Union asserted required the Company to continue the deductions. On October 3, 1968, the Company replied that it would refuse to respect the labor contract in regard to Article I. On October 14, 1968, the Union, by its president, submitted a grievance to the Company concerning the alleged violation of the collective agreement. The Company refused to answer the grievance on the ground that it did not feel that the matter was of a grievable nature. Thereafter the business representative of the Union wrote to the Company requesting that the grievance be submitted to arbitration pursuant to Article XII of the labor agreement. In November of that year, the Company declined to comply with the request for arbitration. Following this denial, the Union instituted this action praying that

[fol. 4] the Company be required to comply with the provisions of the labor agreement which provided for arbitration; or, in the alternative, that the Company be required to pay the amounts which should have been deducted plus interest from the date such deductions should have been made.

The Company contends that it was correct in refusing to honor Article I of the agreement calling for the checkoff of dues on the ground that the Article was void under Section 302 of the Labor Management Relations Act of 1947, 29 U.S.C. § 186. It is the position of the Company that had it continued to deduct the dues from the employees' wages after the receipt of the revocations, it would have

been subject to criminal prosecution under Section 302(d) of the Act, 29 U.S.C. § 186(d).

While Section 302 of the Act prohibits the payment of money by any employer to a labor organization, it includes several exceptions which allow certain types of payments to be made under some circumstances. The exception which is pertinent to the case at bar is codified in Section 302(c), 29 U.S.C. § 186(c), which provides:

> The provisions of this section shall not be applicable ...; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *provided*, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; ...

The Company takes the position that the authorization cards were valid for a period of one year only, and that the automatic renewal provisions included in the authorization forms and the collective agreement were void because they violated the provisions of the above section. Therefore the Company contends that all revocations which were submitted after the expiration of one year were valid and that it was correct in honoring these revocations.

This court has jurisdiction over this matter pursuant to the provisions of Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), since it involves an alleged violation of a contract between an employer and a labor organization. Furthermore, it has been specifically held that

[fol. 5]

the alleged failure to checkoff dues is a matter of direct and peculiar concern of a labor organization and is within the jurisdiction of the federal courts. *United Mine Workers of America, District 22 v. Roncco*, 314 F.2d 186 (10th Cir. 1963); *United Electrical, Radio and Machine Workers of America (UE), Local 107 v. Westinghouse Electric Corp.*, 229 F. Supp. 881 (E.D. Pa. 1964); *United Steelworkers of America, AFL-CIO v. Knoxville Iron Company*, 162 F. Supp. 366 (E.D. Tenn. 1958).

The evidence in the case at bar reveals that there were several employees who submitted their revocations before the expiration of the first year. There can be no doubt that the Company was wrong in honoring these revocations, and therefore, the Union is entitled to relief with respect to Company's failure to continue deductions from the wages of these employees.

On the other hand, the effectiveness of the revocations which were submitted during the second year, after the fifteen day period had expired, is the major issue in this case and presents a more difficult question. In deciding this case, it is first necessary to determine the strength of the Company's reliance on Section 302 as a defense to the Union's present claim. As stated above, the Company is of the opinion that had it continued the dues checkoffs after the receipt of the revocations, it would have been subject to the criminal liability imposed for paying money to a labor organization.

The prohibitions set forth in Section 302 of the Act are directed to employers and union representatives and are intended to prevent bribes, extortion, and other corrupt dealings between the two. *Crajczyk v. Douglas Aircraft Co.*, 210 F. Supp. 702, 705 (S.D. Calif. 1962). The exceptions enumerated in subsection (c) of Section 302 were

enacted to allow certain types of payments from employers to unions without worry of prosecution. This court, in interpreting the section, finds dual significance in the requirement that a written assignment be executed by each employee from whose wages dues are to be deducted. [fol. 5] First, these written assignments serve to facilitate the employer by affording him a document by which to substantiate payments made under this section. Secondly, the language of the written assignment requirement of this subsection suggests that employees have a choice between checkoff and direct, personal payment of their dues. *See Brotherhood of Locomotive Firemen and Enginemen v. Northern Pacific Ry.*, 274 F. 2d 641, 655 (8th Cir. 1960). This voluntary aspect of the provision is of particular importance to this court in determining the interpretation to be given to the one year irrevocability provision of this section.

The legislative history of this section reveals that the section, as approved by the House, provided that authorizations for dues deductions would be "irrevocable by the employee at any time upon thirty days written notice to the employer." *Seapak v. Industrial, Technical and Professional Employees, Division of National Maritime Union, AFL-CIO*, 300 F. Supp. 1197, 1200 (S.D. Ga. 1969), aff'd 400 U.S. 985 (1971). However, the Senate amended the section to read as it presently does with the one year time period for irrevocability. It was thought that a period of one year would better protect the union's position from deterioration through revocation of checkoff authorizations. *See Seapak, supra*, at 1200. Congress could have elected to allow these checkoff authorizations to be irrevocable for the effective period of the collective agreement, but it did not. Instead, Congress seems to have chosen to assure that an individual would have an opportunity to change

his mind about how he wishes to pay his union dues after one year. The automatic renewal provisions contained in the assignment forms in the case at bar do not deny an employee that right.

In light of the fact that the provisions in section 302(c)(4), 29 U.S.C. 186(c)(4), do not make it mandatory for an employee to execute a dues deduction authorization, but merely allow such checkoff arrangements if the employee elects to pay his dues in such a manner, this court is of the opinion that the one year irrevocability provision in the act does not preclude an arrangement such as the one involved in this dispute, in which there is a fifteen day escape period followed by automatic renewal for another year. At no time were the authorizations irrevocable for more than a one year period.

[fol. 7]

It appears to this court that the primary purpose of this section was to prevent unauthorized deductions from employees' wages and to prevent subsequent unauthorized payments of such amounts by the employer to the union. In this regard, this court feels that the assignments in the case at bar were valid, and the Company could have continued to deduct and pay over dues to the Union in accordance with the contract without subjecting itself to criminal prosecution under Section 302.

In 1948, the Justice Department, the agency of our government with the responsibility of prosecuting under this section, issued an opinion in response to an inquiry as to the validity of a checkoff arrangement almost identical to the one in the case at bar. In that opinion, the Department took the position that while the validity of such an arrangement was a matter for judicial determination, it did not feel such an arrangement was violative of the law

and would not prosecute a case arising pursuant to such an arrangement. Justice Department Opinion on Checkoff of May 13, 1948, 22 L.R.R.M. 46 (1948). Arbitrators faced with the problem have relied on this opinion and found that such arrangements are valid and should be performed when bargained for in a collective agreement. *E.g.*, *Eugene Rothmund Co. v. United Packinghouse Workers of America, Local 11, (CIO)*, 14 Lab. Arb. 676 (1950) (Copelof, Arbitrator).

This court agrees with the opinion of the Justice Department that such an arrangement is not violative of Section 302, and therefore, holds that the Company's defense in the case at bar is without merit.

It is next necessary to decide whether the employees who revoked their authorizations and resigned from the Union remained obligated to pay dues when they failed to submit their revocations as prescribed in the authorization cards. If they were not so obligated, the Union's claim for recovery of damages for the Company's failure to deduct these amounts must be denied.

[fol. 8] In the case of *Murtha v. Pet Dairy Products Co.*, 44 Tenn. App. 460, 314 S.W.2d 185 (Ct. App. 1957), 252 employees had revoked their authorization cards and resigned from the union. The union claimed that the company had breached the collective agreement by honoring these revocations. Due to the fact that 234 of these revocations were made during a period of time between the expiration date of a prior collective agreement and the execution date of the new labor contract, the court felt that these authorizations were revocable at will because notice was required at least 60 days and not more than 75 days before the contract renewal date which was

undeterminable in that case. However, the court in *Murtha* stated:

> Had these employees waited until after the new two-year contract was signed on October 27th, as did the remaining 18 employees, their attempt to revoke their authorizations for the irrevocable period of 'one year' would have been ineffective. 314 S.W.2d at 190.

As to the remaining eighteen employees who revoked their authorizations after the new contract had been executed, the court held that these revocations were ineffective, and the company was under a contractual duty to comply with the provisions of the collective agreement for the effective period of the authorizations. 314 S.W.2d at 190. While in *Murtha* the revocations occurred during the first year of the new contract, it is the opinion of this court that the same result is reached when the revocations occur during the second yearly period of irrevocability. Under basic contract principles the effect of the renewal provision in the authorization cards, which were voluntarily executed by employees who had chosen to pay their dues in this manner, is to bind the employee to an obligation of one year's union dues.

In *Seapak*, *supra*, the District Court held that the area of checkoff of union dues has been federally occupied to such an extent that no room remains for state regulation in the same field. Conceivably, the decision in *Seapak* ended the dispute which had arisen between Section 302 and the state "right to work" laws with the regard to the deduction of union dues. In *Seapak*, which was summarily affirmed by the Supreme Court, 400 U.S. 958 (1971), the district court held:

[fol. 9] Checkoff authorizations irrevocable for one year after date do not amount to compulsory unionism as to employees who wish to withdraw from membership prior to that time. 300 F. Supp. at 1201.

The judgment entered in *Seapak* ordered the reimbursement of dues which the company had failed to deduct and remit to the union.

Another case which this court feels is of significance is *International Brotherhood of Operative Potters, AFL-CIO v. Tell City Chair Co.*, 295 F. Supp. 961 (S.D. Ind. 1968). In that case, the defendant company had checked off dues of all employees who had submitted authorizations until certain employees revoked their authorizations before the expiration of one year or the termination of the collective agreement. The company thereafter refused to check-off the dues of employees who had revoked their authorizations. The union sought a declaratory judgment that the company had failed to comply with the labor contract by honoring these revocations. The company asserted that the Indiana anti-wage assignment statute which provided that such assignments were revocable at will controlled, and that it was bound by that statute to honor the revocations. The district court held that Section 302 of the Labor Management Relations Act controlled, and that since the Indiana statute was inconsistent, it could have no application. The court thereafter declared that the company was in violation of the collective agreement.

In the case at bar, this court can see no reason why a revocation during the second one-year period of irrevocability should be treated different from one occurring in the first year. The employees had voluntarily executed a form which provided that it was irrevocable for one

year after which revocation could be made within fifteen days, and if not, then the authorization was renewed for another year. When an employee did not revoke within the prescribed period, he, in effect, obligated himself to the payment of union dues for another year subject to the same revocation provisions which were applicable during the first yearly period. Had the employee re-executed a new authorization for the second year, it would have been irrevocable, and the employee would have been [fol. 10] bound for the payment of dues even if he decided to resign from the union during that year. This court finds no reason why authorizations pursuant to a renewal provision in the original form signed by the employee should be treated differently.

For the above reasons this court finds that the employees were obligated for dues during the second yearly period, and were bound by the same revocation provisions as were applicable in the first year. Furthermore, since these employees would have been bound, the Company was obligated to continue the dues deductions and its failure to do so amounted to a breach of the collective bargaining agreement.

In light of this breach, the Union is entitled to reimbursement for dues which the Company failed to deduct and remit to the Union. *Seapak*, *supra*, at 1201. However, this court does not agree with the Union as to the amount of dues to which it is entitled. The Union asserts that it is entitled to dues from the time the Company stopped deducting such dues from employees wages until January of 1970 when the Company closed its plant in Bristol.

This court is of the opinion and so holds that while the revocations were ineffective to authorize the cessation of deductions during the second yearly period, they were ef-

fective to authorize the Company to cease the deductions at the end of that period. In other words, revocations which were submitted during the year gave the Company and the Union notice of the employees' desire to discontinue the deductions, and it was unnecessary for the employees to re-submit revocations during the fifteen day period at the end of the second year. *See Felter v. Southern Pacific Co.*, 359 U.S. 326, 335, 79 S. Ct. 847, 3 L. Ed. 2d 854 (1959).

Because of the difficulty in deciding the exact amount of money due to the Union in this case, the court directs that the Union and the Company shall by joint action compute the actual monetary amounts to which the Union is entitled. In doing so the court directs that such computation be made within the following guidelines.

[fol. 11] First, the parties shall classify the employees into groups based on when their revocations were submitted. Examination of the exhibits submitted in this case reveals that some employees revoked before the expiration of the first period of irrevocability. As to them the Union is entitled to any dues not withheld during the remainder of that year since these revocations were effective at the end of that period.

The parties shall also determine the number of employees whose names appear in the exhibits who revoked within the fifteen day period at the end of the first year. As to these employees the Union is obviously not entitled to recover.

Finally, the parties shall determine the number of employees whose revocations were submitted during the period of irrevocability. As to these employees the parties shall further determine the number of months for

which union dues were owed taking into account sick leave, lay-offs, terminations, transfers to salaries, and rejoining the union. Once this determination is made, the true amount due from each employee can be computed by multiplying the number of months by the monthly rate of union dues for which each employee was obligated.

The court hereby enters judgment for the plaintiff, and after due consideration does, within its discretion, order that the Union shall be entitled to the principal amount so computed by the parties with no allowance for interest. Furthermore, the court directs each party to bear its respective costs attributed to this matter.

The clerk is directed to send a certified copy of this opinion and judgment to counsel of record.

ENTER:

/s/ Ted Dalton
United States District Judge

September 24, 1971

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 203

LITTON BUSINESS SYSTEMS, INC.,
Petitioner,

v.

MONROE LODGE NO. 770, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether Article I of the collective bargaining agreement and dues deduction authorizations were valid under Section 302(c)(4) of the Labor-Management Relations Act, 61 Stat. 167, 29 U.S.C. 186(c)(4).

STATUTE INVOLVED

Section 302(a) and (c) of the Labor-Management Relations Act, 61 Stat. 167, 29 U.S.C. 186(a) and (c)(4) provides that:

> "(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value— * * *
>
> "(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce— * * *
>
> "(c) The provisions of this section shall not be applicable* * * (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided,* that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; * * * "

STATEMENT

Litton Business Systems, Inc. entered into a collective bargaining agreement on April 27, 1967. This agreement provided in Article I that:

> "Upon receipt, by the company, of a signed authorization, the company will deduct the union initia-

tion or reinstatement fees and monthly dues from the pay of each of its employees who have or who may hereafter authorize such deductions. The sum so deducted shall be paid monthly to the appropriate financial officer of the union, together with an itemized statement showing the source of each deduction.

"All authorized deductions shall be effective and irrevocable for a period of one year or the termination date of this agreement, whichever occurs sooner.

"This authorization shall continue in full force and effect for yearly periods beyond the irrevocable period set forth above, and each subsequent yearly period shall be similarly irrevocable unless revoked within fifteen (15) days after an irrevocable period hereof. Such revocation shall be effective by Registered written notice to both the company, and the union, within fifteen (15) days period."

Following the execution of the union-company collective bargaining agreement, the union sought and received from a substantial number of the employees a new dues deduction authorization and assignment, due to the fact that the previous authorization and assignment had the amount of union dues stated therein which had been increased. The authorization and assignment stated:

"VOLUNTARY CHECKOFF AUTHORIZATION AND ASSIGNMENT

"Name ..... Clock No.....Dept....

"I hereby authorize..... to deduct each month from my wages on account of membership dues in Lodge No..... of the International Association of Machinists. I further authorize the Company to deduct from my wages to the amount of union initi-

ation fee, reinstatement fee and/or assessments when notified in writing to do so by the Financial Secretary of the Union.

"The sums thus to be deducted are hereby assigned by me to Lodge No..... of the International Association of Machinists and are to be remitted by the Company to the Financial Secretary of the Union.

"From time to time the Financial Secretary of the Union will notify the employer as to the amount of the Local Lodge's initiation and reinstatement fees and the amount of the Local Lodge's monthly dues.

"I submit this authorization and assignment with the understanding that it will be effective irrevocable for a period of one year from this date, or up to the termination date of the current collective bargaining agreement (if any) between the ..... and lodge No..... of the International Association of Machinists, whichever occurs sooner.

"This authorization and assignment shall continue in full force and effect for yearly periods beyond the irrevocable period set for the above and each subsequent yearly period shall be similarly irrevocable period hereof. Such revocation shall be effected by written notice to the employer and the union within such fifteen (15) day period.

"Signature .....Date....."

During the second year of the collective bargaining agreement between the parties, in the fall of 1968, a number of employees delivered to the company written revocations of these authorizations. Some of these notices stated that the employees wanted the company to discontinue deduction of their union dues from their wages. Other employees merely indicated their desire to resign from the union.

Although there were a few revocations received by the employer prior to one year after the date they were signed, most of the notices of revocation were sent after one year from the date the employees had originally authorized the deduction and after 15 day escape period provided in the dues deduction authorization had elapsed.

The employer ceased deducting the union dues of the employees who had sent notices of revocation after the one year and 15 day period had elapsed. Although the collective bargaining agreement between the union and the company and the employee authorization cards provided automatic renewal for yearly periods if the cards were not revoked within 15 day period, the employer honored these revocations and discontinued the dues deductions from the employees who had submitted such revocations.

On September 30, 1968, the union wrote the Director of Industrial Relations of the Company advising that the union felt that the company was violating the terms of the collective bargaining agreement by failing to comply with Article I thereof, which the union asserted required the company to continue making the deductions.

On October 3, 1968, the company replied that it would refuse to abide by the collective bargaining agreement in regard to Article I. On October 14, 1968, the union submitted a grievance to the company concerning the aforementioned alleged violation of the collective bargaining agreement. The company refused to answer the grievance on the grounds that the matter was not of a grievable nature. Thereafter, the union wrote the company requesting the grievance be submitted to arbitration pursuant to the terms and conditions of the

collective bargaining agreement. The company declined to comply with this request. Following this denial, the union instituted this suit on December 4, 1968, to compel arbitration; or in the alternative, that the company be required to pay the amounts which should have been deducted plus interest from the date such deductions should have been made. The District Court found that the collective bargaining agreement and the dues deduction authorizations were valid and not in violation of Section 302(c)(4) of the Labor-Management Relations Act, 61 Stat. 167, 29 U.S.C. 186(c)(4). Thereafter, cross appeals were filed by both the union and the company from the decision of the District Court.

ARGUMENT

The decision below concluded that the language of the collective bargaining agreement and the language of the dues deduction authorization were not restrictive and were in conformity with the statute, Section 302(c)(4), 29 U.S.C. 186(c)(4).

1. The decision below, contrary to the contention of the Petitioner, is not in conflict with *Felter* v. *Southern Pacific Co.*, 359 U.S. 326 (1959), for as the Court of Appeals for the 4th Circuit stated:

> "We need only add that the principles stated in Felter v. Southern Pacific Co., 359 U.S. 326 (1959), on which the company primarily relies, pertained to a factual situation so different that they do not dictate reversal." (A. 10)[1]

In the *Felter* case, this court had before it the question of the reasonableness of a requirement that an

[1] The symbol "A" followed by the number refers to the page of the decisions of the Court of Appeals and the District Court as reproduced in the petition.

employee revoking his checkoff must use the form provided by his union. This Court held that this was an unreasonable invasion of the employee's rights provided by the statute. However, in the present case, the employee has the right to revoke his dues deduction (checkoff) at the end of yearly periods although, admittedly, the employee signing the checkoff agrees that if the checkoff is not revoked at the end of the first year period, it automatically becomes irrevocable for another yearly period. Contrary to the *Felter* case, this provision was provided for in the checkoff authorization as well as in the collective bargaining agreement. Thus, as the Court of Appeals held, the facts were so completely different that the *Felter* case had no application to the case at bar.

2. The Petitioner contends that Congress enacted Section 302(c)(4) of the Labor-Management Relations Act to protect an employee in his freedom of choice and to prevent the employee from becoming a captive of a labor organization. It should be pointed out that the employee is not under any compulsion whatsoever to sign the dues authorization (checkoff) and does so only if he so chooses. Furthermore, if the employee does execute the form, he can revoke it at the termination of the collective bargaining agreement or one year from the date of his signing the authorization by notice to the union and the company.

The Petitioner contends that it would have been a simple task for the union to notify the employee when his 15 day escape period occurred. This is certainly not involved in this case for there is no provision in the collective bargaining agreement or dues authorization which requires such a notice although the employer could have, when bargaining on this subject,

included such provision in both the collective bargaining agreement and dues deduction authorization but chose not to do so in this case.

3. The automatic renewal clause of the dues authorization and collective bargaining agreement provides that the authorization can be revoked at the end of one year from the date of signing or the termination of the collective bargaining agreement, whichever occurs sooner. The collective bargaining agreement and dues deduction authorization continues the authorization in full force and effect for yearly periods beyond the irrevocable period set forth. Thus, the clear language makes the authorization revocable at the end of the second year from the date of signing or the termination of the collective bargaining agreement. Furthermore, none of the revocations involved in this case involved termination of the collective bargaining agreement since the agreement did not terminate until March 16, 1970, way beyond the period that the revocations were received.

CONCLUSION

For the reasons stated, the Petition for a Writ of Certiorari should be denied.

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